



General Assembly

January Session, 2005

Raised Bill No. 1124

LCO No. 3677

03677_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

AN ACT CONCERNING THE CUSTODY OF REMAINS OF DECEASED PERSONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 45a-318 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2005*):

3 (a) Any person eighteen years of age or older, and of sound mind,
4 may execute in advance of such person's death a [cremation
5 authorization on a form authorized by the Department of Public
6 Health for the incineration or cremation of such person's body upon
7 the death of such person. Any such document shall be signed and
8 dated by the maker, and attested in writing by two witnesses that the
9 maker was of sound mind and capacity at the time of execution of the
10 authorization. The maker shall include on the form authorized by the
11 Department of Public Health the name, residence address and
12 residence telephone number for the spouse or if there is no surviving
13 spouse, then the next of kin or designated person, duly acknowledged
14 in writing, who shall be notified within the forty-eight-hour waiting
15 period prior to a cremation upon the death of such person. If the
16 spouse, next of kin or designated person is unavailable at the time of

17 death of such person, the funeral director shall refer this matter to the
18 Court of Probate for the district of the domicile or residence of the
19 deceased to grant custody and control to some suitable person] written
20 document, subscribed by such person and attested by two witnesses,
21 either: (1) Directing the disposition of such person's body upon the
22 death of such person, which document may also designate an
23 individual to have custody and control of such person's body and to
24 act as agent to carry out such directions; or (2) if there are no directions
25 for disposition, designating an individual to have custody and control
26 of the disposition of such person's body upon the death of such person.
27 Such disposition shall include, but not be limited to, cremation,
28 incineration, disposition of cremains, burial, method of interment and
29 cryogenic preservation.

30 [(b) The custody and control of the remains of deceased residents of
31 this state shall belong to the surviving spouse of the deceased. If the
32 surviving spouse had abandoned, and at the time of death was living
33 apart from, the deceased, or if there is no spouse surviving, then such
34 custody and control shall belong to the next of kin, unless the
35 decedent, in a duly acknowledged writing, designated another person
36 to have custody and control of the remains of the decedent. The court
37 of probate for the district of the domicile of the deceased may at any
38 time, upon the petition of any of the kin or such person, award such
39 custody and control to that person who seems to the court most fit to
40 have the same. If a deceased resident of the state leaves no spouse, next
41 of kin or designated person surviving, or if the spouse, next of kin or
42 designated person cannot be contacted after due diligence to assume
43 custody and control of the remains of such decedent as provided in
44 this section, or if the spouse, next of kin or designated person refuses
45 to assume such custody and control, the court of probate for the
46 district of the domicile or residence of the deceased may, upon the
47 petition of a selectman or chief officer of such town, a licensed funeral
48 director or the director of health of such town, grant such custody and
49 control to some suitable person. If a person has executed a cremation
50 authorization for the incineration or cremation of such person's body

51 upon death on a form authorized by the Department of Public Health,
52 as described in subsection (a) of this section, and a good faith effort has
53 been made to notify the spouse, next of kin or designated person, or an
54 order from the Probate Court has been obtained, then such instructions
55 may be relied upon by any person acting reasonably and in good faith
56 in reliance upon such written instructions and shall permit any
57 licensed funeral director to obtain a cremation certificate, a cremation
58 permit and carry out the cremation, in accordance with the provisions
59 of section 19a-323. If the funeral director's decision and conduct in the
60 performance of a cremation was reasonable and warranted under the
61 circumstances, then no person may challenge the funeral director's
62 decision to obtain a cremation certificate, a cremation permit and the
63 carrying out of such cremation.

64 (c) This section shall not apply to the disposition of a body of a
65 deceased person under the provisions of sections 19a-270 and 54-102;
66 nor shall it affect the powers and duties of the Chief Medical Examiner
67 under the provisions of sections 19a-406 to 19a-408, inclusive.]

68 (b) In the absence of a written designation of an individual pursuant
69 to subsection (a) of this section, the following individuals, in the
70 priority listed, shall have the right to custody and control of the
71 disposition of a person's body upon the death of such person, subject
72 to any directions for disposition made by such person pursuant to
73 subdivision (1) of subsection (a) of this section:

74 (1) The deceased person's spouse, unless such spouse abandoned
75 the deceased person prior to the deceased person's death or has been
76 adjudged incapable by a court of competent jurisdiction;

77 (2) The deceased person's surviving adult children;

78 (3) The deceased person's surviving parents;

79 (4) The deceased person's surviving siblings;

80 (5) Any adult person in the next degree of kinship in the order

81 named by law to inherit the deceased person's estate, provided such
82 adult person shall be of the third degree of kinship or higher;

83 (6) Such adult person as the Probate Court shall determine.

84 (c) A document for the purposes of subsection (a) of this section
85 may be in substantially the following form, but the use of such form
86 shall not preclude the use of any other form:

87 DISPOSITION OF REMAINS AND

88 APPOINTMENT OF AGENT

89 I,...., of..., being of sound mind, make known that upon my death
90 my body shall be disposed of in the following manner:

91 (Insert desired disposition directions)

92 I appoint of to have custody and control of my body to act as
93 my agent to carry out the disposition directions expressed in this
94 document, and in the absence of disposition directions, to have
95 custody and control of my body and to determine the disposition of
96 my body. If shall decline to act or cannot be located within forty-
97 eight hours of my death or the discovery of my body, then of
98 shall act in that person's place and stead.

99 Executed at (insert location of execution), Connecticut on (insert
100 date of execution).

101

102 (Signature)

103 Signed in our presence by who, at the time of the execution of
104 this document, appeared to be of sound mind and over eighteen years
105 old.

106 of

107

108 (Signature of witness)

109 of

110

111 (Signature of witness)

112 (d) The court of probate for the district of the domicile or residence
113 of a deceased person shall have jurisdiction to hear and decide any
114 issue regarding the custody, control or disposition of the deceased
115 person's body, upon the petition of any individual designated by the
116 deceased person pursuant to subsection (a) of this section, the
117 individual entitled to custody and control under subsection (b) of this
118 section if no designation is made pursuant to subsection (a) of this
119 section, or the funeral director holding the deceased person's body,
120 and upon such notice to interested parties as the court shall determine.

121 (e) The decision of any person, including an individual designated
122 pursuant to subsection (a) of this section, the individuals listed in
123 subsection (b) of this section and the funeral director holding a
124 deceased person's body, acting reasonably and in good faith in reliance
125 on a document executed pursuant to this section may not be
126 challenged.

127 (f) This section shall not (1) apply to the disposition of the body of a
128 deceased person under the provisions of sections 19a-270 and 54-102,
129 (2) affect the powers and duties of the Chief Medical Examiner under
130 the provisions of sections 19a-406 to 19a-408, inclusive, or (3) affect the
131 making of anatomical gifts under the provisions of sections 19a-279a to
132 19a-279l, inclusive.

<p>This act shall take effect as follows and shall amend the following sections:</p>
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Section 1	October 1, 2005	45a-318
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Statement of Purpose:

To provide that a person may execute a writing directing the disposition of such person's remains after death and designating an individual to have custody and control of such remains and to act as agent to carry out such disposition.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]